Kuasatek (M) Sdn Bhd v Rahman bin Uda Itam

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO R1–25–43 OF 1997
KC VOHRAH J
25 FEBRUARY 1999

Evidence *— Documentary evidence — Letter of offer of reinstatement sent to Director-General of Industrial Relations after conciliation proceedings and before Minister was notified of failure of conciliation — Whether such evidence is excluded — Industrial Relations Act 1967 ss 54(1), (2) & (3)*

Labour Law *— Industrial Court — Admissibiltiy of evidence — Letter of offer of reinstatement sent to Director-General of Industrial Relations after conciliation proceedings and before Minister was notified of failure of conciliation — Whether such evidence is admissible — Industrial Relations Act 1967 ss 54(1), (2) & (3)*

On 5 May 1995, the respondent ('the claimant') — after being dismissed by the applicant ('the company') — made representations to the Industrial Relations Department against his dismissal. The Minister — upon being notified by the Director-General — referred the representations to the Industrial Court on 21 March 1996. It was alleged that a letter dated 12 December 1995 was sent by the company to the Director-General of Industrial Relations offering to re-instate the claimant as an employee under certain terms. The Industrial Court refused to admit the letter as evidence based on s 54(2) of the Industrial Relations Act 1967 ('the Act'). The respondent filed an application for an order of certiorari to quash the award of the Industrial Court on the ground that the court had committed an error of law by disallowing the letter to be admitted. Counsel for the claimant contended that the letter was admissible by virtue of s 54(3).

Held, dismissing the application:

The language in sub-s (1) of s 54 refers to the exclusion of evidence in relation to matters in which 'negotiation or conciliation proceedings' have taken place while the language in sub-s (2) refers to the exclusion of evidence in respect of 'any proceedings before the Director-General under s 20(2) ...'. There are no such references in the language of sub-s (3). Reading sub-s (3) in the context of the whole of s 54, sub-s (3) relates to an offer made before the negotiation or conciliation proceedings under the Act intervene. In this case, the letter sought to be admitted in the Industrial Court was sent to the Director-General after he had taken steps to get the parties together for the purpose of conciliation and before the Minister was notified of the failure of the conciliation proceedings and such evidence was excluded under the terms of sub-s (2) of s 54. Therefore, the Industrial Court was correct in excluding the letter of offer of the company under sub-s (2) of s 54 (see p 389B–E).

[Bahasa Malaysia summary

Pada 5 Mei 1995, penentang ('pihak menuntut') — setelah dipecat oleh pemohon ('syarikat tersebut') — membuat representasi kepada Jabatan Perhubungan Perusahaan terhadap pemecatannya. Selepas dinotifikasikan oleh Ketua Pengarah, Menteri merujuk representasi tersebut kepada Mahkamah Perusahaan pada 21 Mac 1996. Ia telah dikatakan bahawa sepucuk surat bertarikh 12 Disember 1995 telah dihantar oleh syarikat tersebut kepada Ketua Pengarah Perhubungan Perusahaan menawarkan untuk menempatkan semula pihak menuntut sebagai seorang kakitangan di bawah terma-terma tertentu. Mahkamah Perusahaan enggan menerima surat tersebut sebagai keterangan berdasarkan kepada s 54(2) Akta Perhubungan Perusahaan 1967 ('Akta tersebut). Penentang memfailkan satu permohonan untuk perintah certiorari untuk membatalkan award Mahkamah Perushaan atas alasan bahawa mahkamah tersebut telah melakukan satu kesilapan dari segi undang-undang dengan tidak membenarkan surat tersebut diterima sebagai keterangan. Peguam bagi pihak menuntut menghujahkan bahawa surat tersebut adalah boleh diterima mengikut s 54(3).

Diputuskan, menolak permohonan:

Bahasa di dalam s 54(1) merujuk kepada pengecualian keterangan berhubung dengan perkara-perkara di mana 'prosiding perundingan atau pendamaian' telah berjalan sementara bahasa dalam sub-s (2) merujuk kepada pengecualian keterangan berkenaan dengan 'apa-apa prosiding di hadapan Ketua Pengarah di bawah s 20(2) ...'. Tidak terdapat rujukan-rujukan sedemikian di dalam bahasa sub-s (3). Dengan membaca sub-s (3) di dalam konteks keseluruhan s 54, sub-s (3) adalah berkaitan dengan satu tawaran yang dibuat sebelum prosiding perundingan atau pendamaian di bawah Akta tersebut berlaku. Dalam kes ini, surat yang cuba dimasukkan di Mahkamah Perusahaan telah dihantar kepada Ketua Pengarah selepas beliau telah mengambil langkah untuk mendapatkan parti-parti tersebut bersama untuk tujuan pendamaian dan sebelum Menteri dinotifikasikan tentang kegagalan prosiding pendamaian tersebut dan keterangan yang sedemikian adalah dikecualikan di bawah terma-terma s 54(2). Maka, Mahkamah Perusahaan adalah betul dalam mengecualikan surat tawaran syarikat tersebut di bawah s 54(2) (lihat ms 389B–E).]

Notes

For cases on documentary evidence generally, see 6 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 688–789.

For cases on Industrial Court generally, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 919–993.

Cases referred to

Minister of Labour & Manpower & Anor v Wix Corp South East Asia Sdn Bhd [1980] 2 MLJ 248 (refd)

Wix Corp South East Asia Sdn Bhd v Minister for Labour and Manpower & Ors [1980] 1 MLJ 224 (refd)

Legislation referred to

Industrial Relations Act 1967 ss 20(1), (2), (3), 54(1), (2), (3)

A Selvamalar Alagaratnam (*Genga Maha Wong & Co*) for the applicant.

S Muhendaran (*Murugavell Arumugam & Co*) for the respondent.

Cur Adv Vult

KC Vohrah J: In this application for an order of certiorari to quash the award of the Industrial Court Award No 36 of 1997, the ground relied on is that the court had committed an error of law by disallowing material evidence to be admitted during its proceedings.

The respondent/claimant was employed by the applicant ('the company') on 1990 and was dismissed on 29 April 1995. The respondent made representations to the Industrial Relations Department against his dismissal under s 20(1) of the Industrial Relations Act 1967 ('the Act') on 5 May 1995.

The Industrial Relations Department held a conciliation meeting between the company and the claimant. Under sub-s 2 of s 20 of the Act the Director-General upon receipt of the representation shall take steps as he may consider necessary or expedient so that an expeditious settlement thereof is arrived at. Where the Director-General is satisfied that there is no likelihood of the representations being settled, he shall then notify the Minister.

Under sub-s (3) of s 20, upon receiving the notification of the Director-General under sub-s (2), the Minister may, if he thinks fit, refer the representations to the Industrial Court for an award. In the present case the Minister referred the representation to the court on 21 March 1996.

Coming back to the period before the Minister referred the matter to the court, a letter dated 12 December 1995 was sent by the company to the Director-General of Industrial Relations stating that the company was agreeable to the re-instating of the claimant under certain terms as an employee of the company and requesting that it be communicated to the claimant. This letter was obviously sent to the Director-General of Industrial Relations within the period of conciliation before the Minister was notified that there was no likelihood of settlement.

In the course of proceedings in the court, the Industrial Court refused to admit the letter. This is what the chairman of the court stated:

> The company had attempted to tender a letter written by the company to the Director-General of Industrial Relations offering to re-instate the claimant. The court allowed the objection of learned counsel for the claimant that if

such letter was in fact written it was excluded by s 54(2) of the Act. In any event the claimant denied receiving such letter ... A

Counsel for the company had relied on sub-s 3 to s 54 to say that the letter is admissible while counsel for the claimant had argued that sub-s (2) thereof clearly excludes the admission of the letter.

Subsections (2) and (3) of s 54 must be read in the whole context of s 54 which is as follows: B

(1) Where a trade dispute relates to matters as to which negotiation or conciliation proceedings have taken place under this Act, no evidence shall be given in the proceedings before the Court as to such negotiation or conciliation proceedings other than a written statement in relation thereto agreed to and signed by the parties to the dispute. C

(2) In a proceeding before the Court on a reference to the Court under section 20(3), no evidence shall be given of any proceeding before the Director-General under section 20 (2) other than a written statement in relation thereto agreed to and signed by the parties to the reference.

(3) No evidence shall be given in proceedings before the Court with regard to any offer relating to any matter connected with the trade dispute made without prejudice by any person or trade union except with the consent of that person or trade union. D

First of all let me deal with sub-s (2) which has been the subject matter of curial insight. In *Wix Corp South East Asia Sdn Bhd v Minister for Labour and Manpower & Ors* [1980] 1 MLJ 224 at p 226 Harun J (as he then was) interpreted s 54(2) thus: E

'The court' in this section means the Industrial Court. Conciliation proceedings are held on a without prejudice basis and the parties may have agreed to settle on certain conditions. Failing settlement, the dispute is revived again and the Industrial Court hears the evidence afresh. The exclusion of evidence of the proceedings under s 20(2) is to avoid prejudice in the mind of the Industrial Court against either party...' F

Harun J went on, however, to hold that these considerations do not apply to the High Court in hearing an application for an order of certiorari. On this particular point the High Court decision was reversed in the Federal Court in *Minister of Labour & Manpower & Anor v Wix Corp South East Asia Sdn Bhd* [1980] 2 MLJ 248. The Federal Court at pp 250–251 had this to say about the exclusion of evidence in conciliation proceedings under sub-s (2) of s 54: G

The steps taken by the Director-General to get the parties together for the purpose of conciliation had been described as 'conciliation proceedings'. The description 'proceeding' must have been brought about by s 54(2) ... H

The use of the words 'any proceeding' in the provision in reference to the steps taken by the Director-General must be taken to be in the loose, and not judicial, sense and must also be taken to give him the option whether or not to have such proceeding. In any case, what should be noted in the provision is that since the legislature has deemed it fit to exclude as evidence such proceeding from the Industrial Court, it should also be excluded from other courts. This provision should indicate that the courts should not be concerned I

A with what transpired at the conciliation proceeding, and where there is no settlement they need only concern themselves with that fact.

Counsel for the company had argued that while sub-s (2) to s 54 provides a general prohibition against evidence relating to the conciliation proceedings, sub-s (3) makes an exception to the general prohibition. With B respect I disagree. The language in sub-s (1) refers to the exclusion of evidence in relation to matters in which 'negotiations or conciliation proceedings' have taken place while the language in sub-s (2) refers to the exclusion of evidence in respect of 'any proceeding before the Director-General under s 20(2)...'. There are no such references in the language of sub-s (3). Reading sub-s (3) in the context of the whole of s 54, without a C doubt, sub-s (3) relates to an offer made before the negotiations or conciliation proceedings under the Act intervene.

In our case the letter that was sought to be admitted in the Industrial Court was sent to the Director-General after he had taken steps to get the parties together for the purpose of conciliation and before the Minister was notified of the failure of the conciliation proceedings and such evidence is D excluded under the terms of sub-s (2) of s 54.

The Industrial Court was correct in excluding the letter of offer of the company under sub-s (2) of s 54; there was no error of law.

I therefore dismiss with costs the application by the company for an order of certiorari to quash the award of the Industrial Court.

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Application dismissed.

Reported by Tan Kah Bee

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